

## **REMARKS**

Reconsideration and withdrawal of the examiner's rejections under 35 USC § 102 is respectfully requested in view of the above amendments and the following remarks. The applicant would like to thank the examiner for his time and kind cooperation in this matter.

### ***35 USC § 102***

The examiner has maintained the rejection of claims 1-29 under 35 U.S.C. 102(b) as being anticipated by Hitchen, EP 463,780, for the reasons of record. In response, applicants have amended independent claims 1 and 29 to clearly distinguish the claims from Hitchen.

Hitchen discloses an aqueous shampoo composition comprising water, surfactants, suspending acrylate polymer, titanium dioxide coated mica and from 0.01 – 10% by weight of insoluble non-volatile silicone. Claims 1 and 29 as now amended require that the isotropic liquid cleansing composition contain less than 0.01% of a hydrophobic emollient such as a hydrophobic insoluble non-volatile silicone, as is required by Hitchen. Therefore, applicants respectfully submit that the claims as now amended are novel and unobvious in view of Hitchen.

The examiner has maintained the rejection of claims 1-29 under 35 U.S.C. 102(e) as being anticipated by Shana'a, et al., U.S. Patent No. 6,737,394, for the reasons of record. The examiner asserts that Shana'a, et al., clearly teaches that the organogel particles are present in an amount of 0.1-25% by weight (see col. 4, lines 13-21), as required in the instant claims. Furthermore, note that the Examples in Table 2 of Shana'a, et al., contain 2.0% by weight of the organogel particles, which meet the requirements of the presently claimed invention. In response, applicants have amended independent claims 1 and 29 to clearly distinguish the claims from Shana'a, et al.

Applicants respectfully submit that the organogel particles disclosed in Shana'a, et al., are different from the solid particulate optical modifier pigments as are now claimed in independent claims 1 and 29. Applicants respectfully call the examiners attention to the discussion in applicant's previous amendment where the composition of Shana'a, et al., is

discussed in detail. Specifically, in Shana'a, et al., gel is defined as a mixture of a solvent and a solid material network (see column 3, line 34-35) and organogel is defined as a gel in which a solvent (diluent) is an organic carrier or organic solvent (see column 3, lines 54-55). Essentially, the organogel is a solid solution of a material solvated in a solvent. The skilled person would know that such an organogel particle is transparent or at least translucent according to its physical chemical structure and is different than a pigment which is an opaque particle, such as "pigment colorants" (see Shana'a, et al., column 22, line 18). The skilled person would further understand that pigment particles or colorants, such as titanium dioxide, can change the appearance of skin when deposited thereon unlike organogel particles which are known by the skilled person to transmit light. In conclusion, the skilled person would compare only the total amount of pigment in the isotropic cleansing composition of Shana'a, et al., with the solid particulate optical modifier in the instant case in order to assess and compare changes in skin appearance when treated with compositions described in both references.

### ***Obviousness-type Double Patenting***

The examiner has maintained the provisional rejection of claims 1-29 on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-28 of copending Application No. 11/071,014 for the reasons of record.

The examiner maintains the instant claims 1-29 are still an obvious formulation in view of claims 1-28 of copending Application No. 11/071,014, and notes that this double patenting rejection is not the only rejection remaining in the application.

In response, applicants respectfully assert that if a "provisional" double patent rejection becomes the only rejection remaining in the application, the examiner is respectfully requested to withdraw the rejection allowing the instant case to issue thereby converting the provisional double patenting rejection to a double patenting rejection for application no. 11/071,014. MPEP 804 (I)(B), 8<sup>th</sup> edition revision 3, October 2005.

### ***Claim Objections***

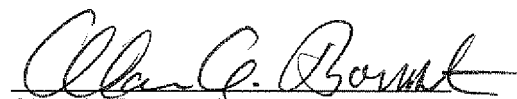
The examiner has objected to claim 14 under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Specifically, the examiner notes that independent claim 1, from which claim 14 depends from, has been amended to recite that the solid particulate optical modifier is present in a concentration of at least about 0.2% by weight, as required in dependent claim 14. Thus, claim 14 fails to further limit claim 1. In response, claim 14 has been cancelled according to the examiner's kind suggestion.

### **CONCLUSION**

In summary, claims 1 and 29 have been amended and claims 10, 14, 18 and 21 have been cancelled. No new matter has been added. Support for the amendments is found on page 24, lines 19-20 of the instant specification and in the claims.

The examiner is invited to contact the undersigned if there are any questions concerning the case.

Respectfully submitted,

  
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